

D R A F T

SUMMARY

Authorizes public utility, upon approval by Public Utility Commission, to issue bonds and securitize debt for costs and expenses incurred or to be incurred by public utility associated with events subject to federal or state declaration of emergency.

Establishes criteria and procedures for commission for approving public utility's application to designate rate recovery expenditures as bondable and establish rate schedules to recover rate recovery expenditures.

Pledges State of Oregon to not limit or alter collection of rate recovery assets or impair rate recovery bonds. Prohibits State of Oregon, public body or commission from limiting or altering collection of rate recovery assets or impairing rate recovery bonds.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1

2 Relating to the securitization of public utility expenditures other than ex-
3 penditures for generation asset retirement; creating new provisions;
4 amending ORS 757.415, 757.455 and 757.460; and declaring an emergency.

5 Whereas the purpose of this 2023 Act is to allow a public utility, if au-
6 thorized by an order issued by the Public Utility Commission, to use
7 securitization financing for certain types of costs related to emergency
8 events and approved for recovery in rates; and

9 Whereas securitized debt may lower the total rates in comparison with
10 other methods of recovery and may benefit the citizens of this state who are
11 public utility customers; and

12 Whereas rate recovery bonds are not a public debt or pledge of the full
13 faith and credit of the state but require the state to provide clear and ex-
14 clusive methods to create, transfer and encumber the rate recovery assets

1 and prohibit future impairment; and

2 Whereas this 2023 Act allowing public utilities to use securitization fi-
3 nancing for emergency related costs does not limit, impair or affect the
4 Public Utility Commission's plenary authority and jurisdiction over rates
5 and services offered by public utilities; now, therefore,

6 **Be It Enacted by the People of the State of Oregon:**

7 **SECTION 1.** ORS 757.415 is amended to read:

8 757.415. (1) Except as otherwise permitted by subsection (4) of this section,
9 a public utility may issue stocks and bonds, notes and other evidences of
10 indebtedness, certificates of beneficial interests in a trust and securities for
11 the following purposes and no others:

12 (a) The acquisition of property, or the construction, completion, extension
13 or improvement of its facilities.

14 (b) The improvement or maintenance of its service.

15 (c) The discharge or lawful refunding of its obligations.

16 (d) The reimbursement of money actually expended from income or from
17 any other money in the treasury of the public utility not secured by or ob-
18 tained from the issue of stocks or bonds, notes or other evidences of indebt-
19 edness, or securities of such public utility, for any of the purposes listed in
20 paragraphs (a) to (c) of this subsection except the maintenance of service and
21 replacements, in cases where the applicant has kept its accounts and
22 vouchers for such expenditures in such manner as to enable the Public
23 Utility Commission of Oregon to ascertain the amount of money so expended
24 and the purposes for which such expenditures were made.

25 (e) The compliance with terms and conditions of options granted to its
26 employees to purchase its stock, if the commission first finds that such terms
27 and conditions are reasonable and in the public interest.

28 (f) The finance or refinance of bondable [*conservation investment*] **rate**
29 **recovery expenditures** as described in ORS 757.455. Bonds, notes, certifi-
30 cates of beneficial interests in a trust and other evidences of indebtedness
31 or ownership, issued for this purpose are [*conservation*] **rate recovery** bonds

1 for the purposes of ORS 757.460. [*Conservation bonds may rely partly or*
2 *wholly for repayment on conservation investment assets and revenues arising*
3 *with respect to conservation investment assets.*]

4 (2) Before issuing such securities a public utility, in addition to the other
5 requirements of law, shall secure from the commission upon application an
6 order authorizing such issue, stating:

7 (a) The amount of the issue and the purposes to which the issue or the
8 proceeds thereof are to be applied;

9 (b) In the opinion of the commission, the money, property or labor to be
10 procured, [*or*] paid for **or refinanced** by such issue reasonably is required
11 for the purposes specified in the order and compatible with the public in-
12 terest, which is necessary or appropriate for or consistent with the proper
13 performance by the applicant of service as a public utility, and will not im-
14 pair its ability to perform that service; and

15 (c) Except as otherwise permitted in the order in the case of bonds, notes
16 or other evidences of indebtedness, such purposes are not, in whole or in
17 part, reasonably chargeable to operating expenses or to income.

18 (3) This section and ORS 757.410 apply to demand notes but do not apply
19 to the issuance or renewal of a note or evidence of indebtedness maturing
20 not more than one year after date of such issue or renewal.

21 (4) Nothing in ORS 757.400 to 757.460 shall prevent issuance of stock to
22 stockholders as a stock dividend if there has been secured from the commis-
23 sion an order:

24 (a) Finding that the stock dividend is compatible with the public interest;

25 (b) Authorizing such issue and a transfer of surplus to capital in an
26 amount equal to the par or stated value of the stock so authorized; and

27 (c) Finding that a sum equal to the amount to be so transferred was ex-
28 pended for the purposes enumerated in subsection (1) of this section.

29 (5) [*Conservation*] **Rate recovery** bonds authorized pursuant to subsection
30 [(1)] **(1)(f)** of this section may be issued directly by a public utility or
31 through a finance subsidiary. A “finance subsidiary” means any corporation,

1 limited liability company, company, association, trust or other entity that is:

2 (a) Beneficially owned, directly or indirectly, by a public utility or, in the
3 case of a trust, for which a public utility or subsidiary thereof is the grantor;
4 or

5 (b) Unaffiliated with a public utility and acquires bondable [*conservation*
6 *investment*] **rate recovery assets** directly or indirectly from a public utility
7 in a transaction approved by the commission.

8 **SECTION 2.** ORS 757.455 is amended to read:

9 **757.455. (1) As used in this section, “rate recovery expenditures”**
10 **means costs and expenses incurred or to be incurred by a public utility**
11 **associated with:**

12 (a) **An event that is the subject of a federal or state declaration of**
13 **a state of emergency, such as severe weather, catastrophic wildfire,**
14 **pandemic or other event that causes or threatens to cause widespread**
15 **loss of life, injury to person or property, human suffering or financial**
16 **loss, except for those costs and expenses that are a criminal or civil**
17 **fine or penalty or judgment from a civil action based on negligence**
18 **related to the event.**

19 (b) **An energy conservation program that provides loans and cash**
20 **payments to customers for the installation of energy conservation**
21 **measures at the expense of the public utility, including, but not lim-**
22 **ited to, the costs or expenditures for specific acquisition program de-**
23 **velopment, promotion and labor costs and associated general**
24 **supervision, rents, leases and overheads.**

25 [(1)] (2) It is the policy of the [*Public Utility Commission*] **State** of
26 Oregon to encourage financing **certain expenditures and investments by**
27 **public utilities** at the lowest possible cost to utility customers, including
28 but not limited to [*conservation program*] **rate recovery expenditures. To**
29 **carry out the policy described in this subsection, the State of Oregon**
30 **pledges and agrees to not limit or alter the collection of rate recovery**
31 **assets established under subsection (5) of this section or impair rate**

1 **recovery bonds issued pursuant to ORS 757.415 or 757.460. A public**
 2 **utility or finance subsidiary issuing rate recovery bonds may include**
 3 **this pledge in the issued bonds.**

4 [(2)] (3) If the **Public Utility** Commission [*decides*] **determines** that a
 5 public utility should defer and amortize certain [*conservation program*] **rate**
 6 **recovery** expenditures, the public utility may apply to the commission for
 7 an order designating all or part of the [*conservation program*] **rate recovery**
 8 expenditures as bondable [*conservation investment*] **rate recovery expendi-**
 9 **tures**, for the purpose of financing or refinancing the designated expendi-
 10 tures under ORS 757.415 (1)(f). After notice and an opportunity for a hearing,
 11 the commission may approve the application if it finds that:

12 (a) The [*conservation program*] expenditures included in the application
 13 are [*used, useful*] **reasonable** and prudent;

14 (b) [*and that*] Financing or refinancing **the expenditures** is likely to be
 15 more favorable to customers than **by recovery of the expenditures**
 16 **through** other [*reasonably*] available alternatives[.]; **and**

17 (c) **Bonds, notes, certificates of beneficial interests in a trust and**
 18 **other evidences of indebtedness or ownership issued pursuant to the**
 19 **approval are reasonably likely to receive a determination of, at a**
 20 **minimum, investment grade by credit rating agencies.**

21 (4)(a) [*Upon approval,*] The commission shall issue an order [*stating the*]
 22 **within 180 days of application approving or denying the application. If**
 23 **the commission approves the application, the order shall specify the**
 24 **highest** amount of [*the conservation program*] expenditures that qualify as
 25 bondable [*conservation investment*] **rate recovery expenditures.**

26 (b) **In specifying the amount for rate recovery expenditures associ-**
 27 **ated with an event described in subsection (1)(a) of this section, net**
 28 **of appropriate adjustments as determined by the commission to be**
 29 **reasonable, the commission may allow as rate recovery expenditures,**
 30 **without limitation, the following:**

31 (A) **Capital and operating costs incurred or to be incurred as a re-**

1 **sult of the event;**

2 **(B) Lost revenue associated with the event;**

3 **(C) Costs and expenses that may be recovered at a later time from**
4 **third parties or insurers; and**

5 **(D) Carrying costs or charges.**

6 *[(3) The commission shall set rates to include in revenue requirement re-*
7 *covery of a public utility's bondable conservation investment, as well as the*
8 *costs of equity and debt capital associated with it, including, without limita-*
9 *tion, the payment of principal, premium, if any, and interest on conservation*
10 *bonds. Revenues collectible or collected under this subsection shall be known*
11 *as "conservation investment assets." The commission shall not revalue*
12 *bondable conservation investment for rate-making purposes, determine that*
13 *revenues required to recover bondable conservation investment and associated*
14 *equity and debt capital costs are unjust or unreasonable, impair or reduce in*
15 *any way the value of conservation investment assets, or impair the timing or*
16 *the amount of revenues arising with respect to conservation investment assets*
17 *that have been used to secure financing or refinancing under ORS 757.415*
18 *(1)(f).]*

19 *[(4) Subsections (2) and (3) of this section shall apply to any amounts*
20 *presently deferred by a utility regardless of whether expended prior to Sep-*
21 *tember 9, 1995.]*

22 *[(5) As used in this section, "conservation program expenditures" includes,*
23 *without limitation, loans and cash payments made to customers, the costs of*
24 *conservation measures installed at the expense of the public utility, specific*
25 *acquisition program development, promotion and labor costs and associated*
26 *general supervision, rents, leases and overheads.]*

27 **(5)(a) As part of an order approving an application, the commission**
28 **shall establish rate schedules that permit recovery of a public utility's**
29 **rate recovery expenditures, plus the payment of premium and interest**
30 **on rate recovery bonds, the costs of issuance of the bonds and any**
31 **estimated or expected tax payments. Revenues collected or collectable**

1 under this subsection are rate recovery assets for purposes of this
2 section and ORS 757.460.

3 (b) Rates established under this section shall be collected through
4 rates or charges paid by customers of the utility consistent with cost
5 causation and rate design principles and any other statutory or regu-
6 latory requirements.

7 (c) Rates established under this section by a final, nonappealable
8 order are irrevocable and unchangeable until the payment of principal,
9 premium and interest on rate recovery bonds and issuance costs are
10 repaid. Consistent with this restriction, the State of Oregon, a public
11 body, as defined in ORS 174.109, or the commission may not:

12 (A) Revalue bondable rate recovery expenditures for ratemaking
13 purposes;

14 (B) Determine that rates or revenues established under this section
15 are unjust or unreasonable;

16 (C) Impair or reduce the value, amount, timing or collection period
17 of rate recovery assets;

18 (D) Rescind, suspend or amend the order authorizing the rate re-
19 covery assets, unless all amounts specified by the order have been re-
20 paid; or

21 (E) When setting other rates or charges for the public utility or
22 taking other actions pursuant to the commission's authority, consider
23 rate recovery bonds issued pursuant to ORS 757.460 as debt of the
24 public utility, rate recovery assets to be revenue for the public utility
25 or rate recovery expenditures to be costs of the public utility.

26 (6) The commission may not require a public utility to:

27 (a) Apply to the commission for an order designating all or part of
28 rate recovery expenditures as bondable rate recovery expenditures; or

29 (b) Finance or refinance rate recovery expenditures that the com-
30 mission has designated as bondable rate recovery expenditures.

31 (7) The commission shall order a separate and distinct rate credit

1 **for ratepayers that reflects any moneys that a public utility recovers**
2 **from a third party or insurer for costs or expenses incurred by the**
3 **public utility associated with events described under subsection (1)(a)**
4 **of this section if those costs and expenditures have been incorporated**
5 **into a rate schedule established under subsection (5) of this section for**
6 **the recovery of the public utility’s rate recovery expenditures.**

7 **SECTION 3.** ORS 757.460 is amended to read:

8 **757.460. (1) As used in this section:**

9 **(a) “Bonds” includes bonds, notes, certificates of beneficial interests**
10 **in a trust and other evidence of indebtedness.**

11 **(b) “Finance subsidiary” has the meaning given that term under**
12 **ORS 757.415.**

13 **(c) “Rate recovery assets” means the revenues, claims, payments,**
14 **moneys or proceeds collected or collectable under an order issued by**
15 **the Public Utility Commission pursuant to ORS 757.455 to recover rate**
16 **recovery expenditures and any other associated costs and expenses in**
17 **the order.**

18 **(d) “Rate recovery bonds” means bonds issued by a public utility**
19 **or finance subsidiary to finance or refinance bondable rate recovery**
20 **expenditures pursuant to ORS 757.455.**

21 **(e) “Secured party” means the holder of any bonds that has been**
22 **granted a security interest in rate recovery assets.**

23 *[(1) A public utility or finance subsidiary may pledge conservation invest-*
24 *ment assets as collateral for conservation bonds by providing for a security*
25 *interest in the conservation investment assets. A security interest in conserva-*
26 *tion investment assets is created and perfected only upon entry of an order by*
27 *the Public Utility Commission of Oregon approving a contract governing the*
28 *granting of the security interest, and the filing with the Secretary of State of*
29 *a Uniform Commercial Code Article I financing statement showing such*
30 *pledger as “debtor” and identifying the conservation investment assets and the*
31 *bondable conservation investment pledged as security. The security interest is*

1 *enforceable against the debtor and all third parties, subject to the rights of*
2 *any third parties holding security interests in the conservation investment as-*
3 *sets perfected in the manner described in this section if value has been given*
4 *by the purchasers of the conservation bonds. An approved security interest in*
5 *conservation investment assets is a continuously perfected security interest in*
6 *all revenues and proceeds arising with respect to the associated bondable con-*
7 *servation investment, whether or not those revenues have accrued. Upon ap-*
8 *proval by the commission, the priority of the security interest shall be as set*
9 *forth in the contract governing the conservation bonds. Conservation invest-*
10 *ment assets constitute property for the purposes of contracts securing the con-*
11 *servation bonds, whether or not the related revenues have accrued.]*

12 **(2)(a) A public utility or finance subsidiary may grant a security**
13 **interest in rate recovery assets as collateral for rate recovery bonds.**
14 **A security interest in rate recovery assets is valid and enforceable**
15 **against the debtor and third parties, subject to the rights of any third**
16 **parties holding security interests in the rate recovery assets attached**
17 **and perfected in the manner described under this subsection.**

18 **(b) A security interest in rate recovery assets attaches if:**

19 **(A) The commission has entered an order designating rate recovery**
20 **expenditures as bondable pursuant to ORS 757.455;**

21 **(B) The secured party has given value; and**

22 **(C) The debtor has signed a security agreement granting the se-**
23 **cured party a security interest in the rate recovery assets.**

24 **(c) A valid and enforceable security interest in rate recovery assets**
25 **is perfected if:**

26 **(A) The security interest has attached in the manner described in**
27 **paragraph (b) of this subsection; and**

28 **(B) A financing statement has been filed in accordance with the**
29 **requirements of ORS chapter 79 that identifies the debtor as “debtor”**
30 **and the rate recovery assets granted as security. A description in the**
31 **financial statement that refers to the commission order creating the**

1 **bondable rate recovery expenditures and rate schedules upon which**
2 **the rate recovery assets are based shall be sufficient for identifying the**
3 **rate recovery assets granted as security.**

4 (d) **A perfected security interest in rate recovery assets is a con-**
5 **tinuously perfected security interest, whether or not the related reve-**
6 **nuces have accrued. Rate recovery assets constitute property for the**
7 **purposes of contracts securing the rate recovery bonds, whether or not**
8 **the related revenues have accrued. Multiple security interests in the**
9 **same rate recovery assets shall rank according to priority in time of**
10 **perfection.**

11 [(2)] (3)(a) **Subject to the terms of the security agreement covering**
12 **the rate recovery assets,** the relative priority of a security interest created
13 under this section is not [*defeated or*] adversely affected by the commingling
14 of revenues arising with respect to [*conservation investment*] **rate recovery**
15 assets with other funds of the debtor. [*The holders of conservation bonds*]
16 **Upon compliance with the requirements under subsection (2) of this**
17 **section, the secured party** shall have a perfected security interest in all
18 cash [*and deposit accounts*] of the debtor in which revenues arising with re-
19 spect to [*conservation investment*] **rate recovery** assets pledged to the hold-
20 ers of [*conservation*] **rate recovery** bonds have been commingled with other
21 funds, but the perfected security interest is limited to an amount not greater
22 than the amount of [*the revenues*] **rate recovery assets** received by the
23 debtor within 12 months before any default under the [*conservation*] **rate**
24 **recovery** bonds held by the holders or the institution of insolvency pro-
25 ceedings by or against the debtor, less payments made from the revenues to
26 the holders during that 12-month period. [*If a default occurs under an ap-*
27 *proved contract governing conservation bonds, the holders of the conservation*
28 *bonds or their authorized representatives, as secured parties, may foreclose or*
29 *otherwise enforce the perfected security interest in the conservation investment*
30 *assets securing the conservation bonds, subject to the rights of any third par-*
31 *ties holding prior security interests in the conservation investment assets per-*

1 *fected in the manner provided in this section.]*

2 **(b) Notwithstanding any provision of this subsection, the rights and**
3 **remedies of a secured party in enforcing a secured interest do not in-**
4 **clude and are without recourse to any public utility asset except for**
5 **the rate recovery assets, even if the rate recovery assets are**
6 **commingled with other funds of the public utility.**

7 **(c) A secured party or secured party's representatives may apply to**
8 **the commission for relief, if a public utility or finance subsidiary de-**
9 **faults on a required payment arising from the issuance of rate recov-**
10 **ery bonds.** Upon application by [*the holders of the conservation bonds or*
11 *their*] **a secured party or secured party's** representatives, without limiting
12 other remedies of [*those holders or*] **the secured party or secured party's**
13 representatives, the commission shall order the sequestration and payment
14 to the [*holders or their*] **secured party or secured party's** representatives
15 of revenues arising with respect to the [*debtor*] **rate recovery assets. Not-**
16 **withstanding any bankruptcy, reorganization or other insolvency pro-**
17 **ceeding with respect to the debtor or transferor of the rate recovery**
18 **assets, the commission's order shall remain in full force and effect.**
19 **Any surplus in excess of amounts necessary to pay principal, premium,**
20 **if any, interest, costs and arrearages on the rate recovery bonds and**
21 **other costs arising under the security agreement shall be remitted to**
22 **the debtor or transferor.**

23 [(3)] **(4) The granting, perfection and enforcement of security interests in**
24 [*conservation investment*] **rate recovery** assets to secure [*conservation*] **rate**
25 **recovery** bonds [*is governed by this section and not by*] **are subject to ORS**
26 **chapter 79, except that when a provision in ORS chapter 79 comes in**
27 **conflict with a provision in this section, the provision in this section**
28 **shall control.**

29 [(4)] **(5) A transfer of [*conservation investment*] rate recovery** assets by
30 a public utility to a finance subsidiary that the parties have expressly stated
31 in the governing documentation to be a sale or other absolute transfer, in

1 a transaction approved in an order issued by the commission and made in
2 connection with the issuance by the finance subsidiary of [*conservation*] **rate**
3 **recovery** bonds, shall be treated as a true sale and not as a pledge or other
4 financing of the [*conservation investment*] **rate recovery** assets. According
5 the holders of [*conservation*] **rate recovery** bonds a preferred right to reve-
6 nues of the public utility or the provision by the utility of other credit en-
7 hancement with respect to [*conservation*] **rate recovery** bonds does not
8 impair or negate the characterization of any transfer as a true sale.

9 [(5)] **(6)** Any successor to a public utility pursuant to any bankruptcy,
10 reorganization or other insolvency proceeding shall perform and satisfy all
11 obligations of the utility under an approved contract governing
12 [*conservation*] **rate recovery** bonds in the same manner and to the same ex-
13 tent as was required of the utility before the proceeding, including, without
14 limitation, collecting and paying to the holders of the [*conservation*] **rate**
15 **recovery** bonds or their representatives revenues arising with respect to the
16 [*conservation investment*] **rate recovery** assets pledged to secure the [*con-*
17 *servation*] **rate recovery** bonds.

18 **(7) If a public utility transfers rate recovery assets to a finance**
19 **subsidiary and the finance subsidiary issues rate recovery bonds se-**
20 **cured by the rate recovery assets, the finance subsidiary shall place**
21 **the proceeds from the issuance of the rate recovery bonds in a sepa-**
22 **rate account maintained by the finance subsidiary. The commission**
23 **order approving the transaction must specify that the public utility**
24 **shall be reimbursed for authorized rate recovery expenditures only**
25 **from the separate account maintained by the finance subsidiary.**

26 [(6) *As used in this section:*]

27 [(a) *“Conservation investment assets” has the meaning given under ORS*
28 *757.455.*]

29 [(b) *“Finance subsidiary” has the meaning given under ORS 757.415.*]

30 **SECTION 4. The amendments to ORS 757.415, 757.455 and 757.460 by**
31 **sections 1 to 3 of this 2023 Act apply to costs and expenses incurred**

1 by a public utility even if the costs and expenses were incurred by the
2 public utility prior to the effective date of this 2023 Act.

3 SECTION 5. This 2023 Act being necessary for the immediate pres-
4 ervation of the public peace, health and safety, an emergency is de-
5 clared to exist, and this 2023 Act takes effect on its passage.

6
